

BUSINESS RESCUE AND FORENSIC INVESTIGATIONS

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- > Section 128(1)(f)
 - > It appears to be reasonably unlikely that the company will be able to pay all of its debts as they become due and payable within the immediately ensuing 6 months (commercial insolvency);
 - > It appears to be reasonably likely that the company will become insolvent (its liabilities will exceed its assets) within the immediately ensuing 4 months
- > Section 129 – voluntarily placed into business rescue by board resolution
- > Section 129(7) – notice of financial distress and reasons why the resolution was not adopted (!! To do, or not to do !!)
- > Section 130 – placed into business rescue by court order

OBJECTIVES OF BUSINESS RESCUE

- > Section 7(k) – efficient rescue of a financially distressed company that balances the rights and interests of all stakeholders

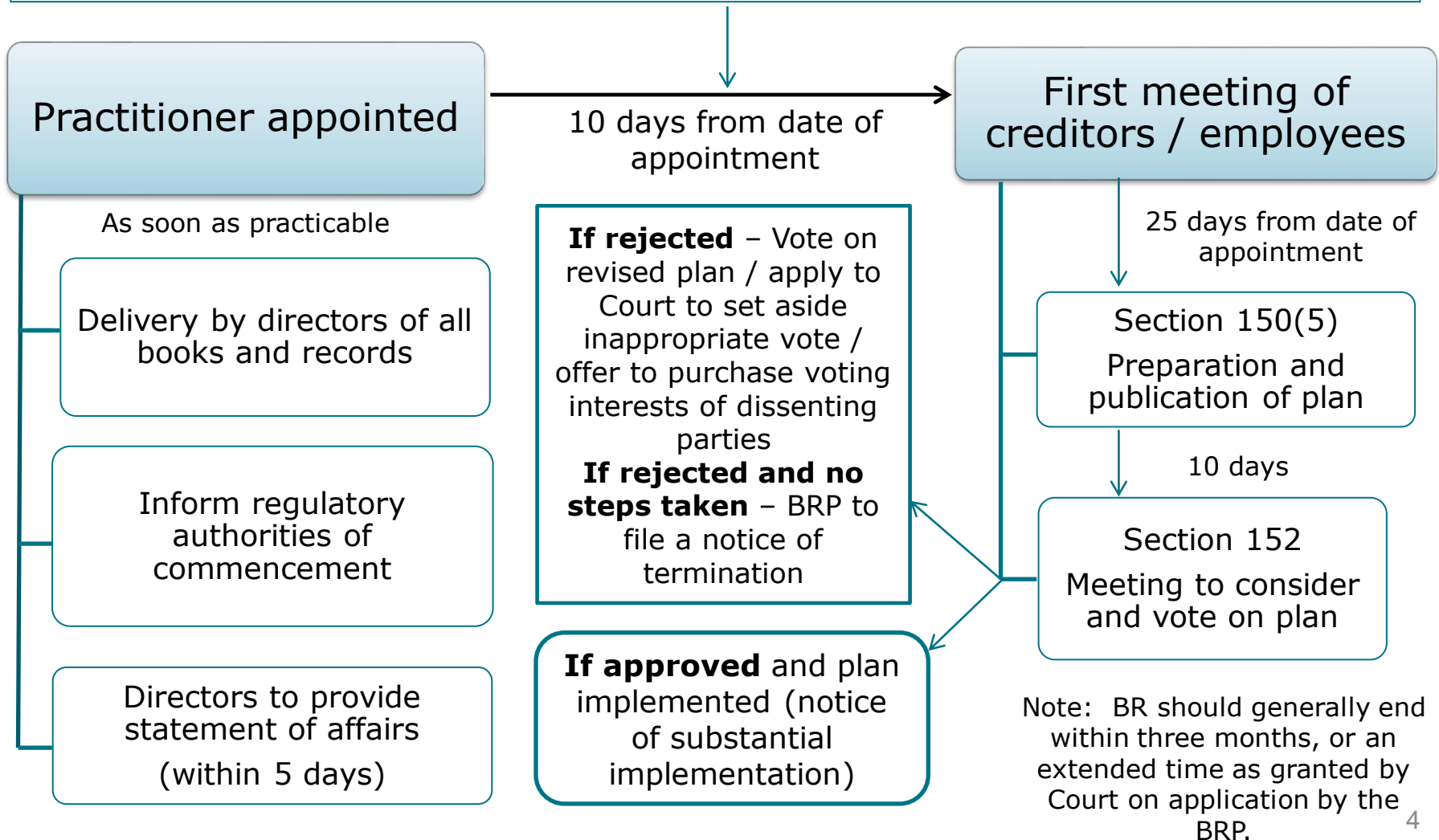
- > Section 128(1)(b) – to develop a business rescue plan that:
 - > Restructures the affairs, business, property, debt or other liabilities and equity that maximizes the likelihood of the company continuing in existence on a solvent basis; or

 - > Results in a better return for creditors than would have resulted from the immediate liquidation of the company.

- > True benefit of business rescue: a temporary moratorium on the rights of claimants against the company or in respect to property lawfully in its possession

SNAPSHOT OF BUSINESS RESCUE PROCESS AND TIME PERIODS

The BRP must (as soon as practicable after being appointed) investigate the company's affairs and consider if there are reasonable prospects of the company being rescued. If not, apply to court to discontinue proceedings and place the company in liquidation (this can be done at any time)



ROLE OF THE BUSINESS RESCUE PRACTITIONER

- > Full management and control of the company in substitution for its board and pre-existing management, and:
 - > is an officer of the court;
 - > has the responsibilities, duties and liabilities of a director as set out in sections 75 to 77;
- > May, however, delegate to pre-existing management of the company
- > May remove from office any person who forms part of the pre-existing management of the company
- > Is responsible for:
 - > the development of the business rescue plan; and
 - > the implementation of the business rescue plan.

DIRECTORS' ROLE IN BUSINESS RESCUE

> Section 137

- > Must continue to exercise the functions of directors, subject to the authority of the practitioner
- > Must exercise management functions in accordance with the express and reasonable instructions or direction of the practitioner
- > Remains bound by the requirements of section 75
- > Must provide the practitioner with any information about the company (reiterated in section 142)
- > Any action taken, without the approval of the practitioner, is void

INVESTIGATION OF AFFAIRS OF THE COMPANY

> Section 141

- > Investigate affairs to determine if there is a reasonable prospect of rescuing the company
- > If there is evidence in the dealings of the company before the business rescue proceedings began of:
 - > voidable transactions; or
 - > reckless trading, fraud or other contravention,

then the company must:

- > forward the evidence to the appropriate authority for further investigation;
- > direct the management to take any necessary steps

THANK YOU

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